



# United States Department of the Interior

## IDAHO FISH AND WILDLIFE OFFICE

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FEB 04 2011

Marilyn Fonseca  
Oregon Department of Environmental Quality  
Water Quality Division  
811 Southwest 6<sup>th</sup> Avenue  
Portland, Oregon 97204

Subject: Rulemaking for Site-Specific Temperature Criteria at Hells Canyon Dam—  
Adams and Washington Counties, Idaho and Baker, Malheur and Wallowa  
Counties, Oregon—Comments  
Hells Canyon Hydroelectric Project FERC 1971 14420-2011-CPA-0046

Dear Ms. Fonseca:

The Fish and Wildlife Service (Service) recommends initiating formal rulemaking on the Hells Canyon site-specific temperature criteria petition submitted to the Oregon Environmental Quality Commission by Idaho Power Company. The rulemaking analysis is an integral component of the ongoing water temperature discussion that is part of the Hells Canyon Complex (HCC) relicensing proceedings. The rulemaking is important because information from the analysis may be used to develop the Clean Water Act (CWA) 401 water quality certification for the project. In turn, the CWA 401 certification informs the Service's review of the project when completing our required section 7 consultation under the Endangered Species Act (ESA) of 1973, as amended.

The current CWA 401 application contains a proposal for a hypolimnetic pumping system (HPS) designed to meet current temperature criteria for Fall chinook (*Oncorhynchus tshawytscha*) spawning below Hells Canyon Dam. A previous CWA 401 application contained a proposal for an upstream program referred to as TEMP to help mitigate upstream Snake River watershed problems to meet temperature requirements below Hells Canyon Dam. The Service letter dated Nov 15, 2010, addressed these two approaches. Subsequently, additional written communications to the Oregon Department of Environmental Quality (ODEQ) has made it clear that a range of scientific findings and remaining issues need to be discussed. Specifically, interested parties need to resolve the temperature compliance issue below Hells Canyon Dam and the water quality issues in the HCC and the Snake River watershed. The proposed rulemaking will aid this process.

Discussions to resolve the CWA 401 certification need to include, in part, the issues surrounding the currently proposed rulemaking and HPS, and the previously proposed upstream mitigation program known as TEMP. A clear understanding of the watershed-level impacts, uncertainties, and benefits is necessary before any decisions are made because this information may be needed to complete the CWA 401 certification and ESA consultation. Several species listed under the ESA may be affected by these decisions; in particular, bull trout (*Salvelinus confluentus*) and its newly designated critical habitat occur in the project area. In addition, any upstream mitigation may include the Snake River physa (*Physa natricina*) and Bliss Rapids snail (*Taylorconcha serpenticola*).

To issue its license for the project, the Federal Energy Regulatory Commission (FERC) needs the CWA 401 certificates from Oregon and Idaho, and two ESA section 7 consultations from the Service and NOAA Fisheries. In order for the Service to complete its section 7 consultation, we need a thorough discussion with ODEQ regarding the supporting science and the decisions to meet compliance issues at the project. In addition, wider, more inclusive discussions are needed to settle remaining matters associated with the HCC license. These discussions should involve the licensee and critical decision-making parties such as the FERC, Oregon Department of Fish and Wildlife, Idaho Fish and Game, Idaho Department of Environmental Quality, NOAA Fisheries, U.S. Environmental Protection Agency, Tribal interests, and others.

Thank you for the opportunity to comment on this important matter. Please contact Michael Morse of my staff at (208) 378-5261 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian T. Kelly for". The signature is written in a cursive, flowing style.

Brian T. Kelly, State Supervisor  
Idaho Fish and Wildlife Office

cc: IDEQ, Boise (Burnell)